

SNELL & WILMER L.L.P.
Alan L. Sullivan (3152)
Amy F. Sorenson (8947)
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800
Email: asullivan@swlaw.com
asorenson@swlaw.com

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler (admitted pro hac vice)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700
Email: echesler@cravath.com
dmariott@cravath.com

*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC., by and through the
Chapter 7 Trustee in Bankruptcy, Edward N.
Cahn,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**[PROPOSED] ORDER GRANTING IBM'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON THE BASIS OF THE NOVELL
JUDGMENT**

Civil No. 2:03-cv-00294-DN

Honorable David Nuffer

Whereas IBM has moved for partial summary judgment on the basis of the final judgment in SCO Group, Inc. v. Novell, Inc., No. 2:04-cv-00139-TS; and whereas the Court has considered the arguments of both parties;

It is hereby **ORDERED, ADJUDGED AND DECREED** that IBM's Motion for Partial Summary Judgment on the Basis of the Novell Judgment is granted.

It is further **ORDERED** that judgment is entered in favor of IBM and against SCO on IBM's Counterclaim IX, related to IBM's activities concerning AIX and Dynix; and IBM's Counterclaim X, concerning IBM's Linux activities.

It is further **ORDERED** that partial judgment is entered in favor of IBM and against SCO on SCO's Unfair Competition Claim (Count VI) and Tortious Interference Claims (Counts VII and IX) except insofar as those claims concern UNIX code that was developed by SCO after 1995 and that was not the subject of the 1995 Asset Purchase Agreement between SCO and Novell.

It is further **ORDERED** that, with respect to all remaining claims and counterclaims, SCO is bound by, and may not here relitigate, the Novell Judgment, including its determination that Novell (not SCO) owned the pre-1996 UNIX copyrights, and that Novell properly waived SCO's claims against IBM for purported breaches of IBM's UNIX licensing agreements with AT&T.

DATED this ____ day of _____, 2013.

BY THE COURT

David Nuffer
United States District Court Judge